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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,165	07/29/2005	Athanassios Tzikas	4-22830/A/PT	8577
324 7590 06/16/2010 BASF Performance Products LLC Patent Department 540 White Plains Road P.O. Box 2005 Tarrytown, NY 10591				
EXAMINER KHAN, AMINA S				
ART UNIT 1796		PAPER NUMBER		
NOTIFICATION DATE 06/16/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/544,165

Applicant(s)

TZIKAS ET AL.

Examiner

AMINA KHAN

Art Unit

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/7/2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7, 8 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 8 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s) Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s) Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 7, 2010 has been entered.
2. Claims 1-4,7,8 and 11 are pending. Claims 5,6,9,10,12 and 13 have been cancelled.
3. Claims 1-4,7,8 and 11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Tzikas et al (US 6,160,101) in view of Tzikas et al (WO 00/06652) for the reasons set forth in the previous office action.
4. Claims 1 and 8 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/551,319 for the reasons set forth in the office action dated May 13, 2008. Applicants have not argued this rejection.

Response to Arguments

5. Applicant's arguments filed regarding Tzikas et al (US 6,160,101) in view of Tzikas et al (WO 00/06652) have been fully considered but they are not persuasive. The applicant argues that the Declaration under Rule 132 filed on June 7, 2010 is sufficient to demonstrate that the claimed dye mixture does more than yield predictable results, specifically improved build-up behavior. The examiner respectfully argues that applicants showing of unexpected results is limited to the dye mixture of the species of dyes of formula (102) and (101) at the concentrations of 78% and 22%, respectively, and is not commensurate in scope with the broad genus of dyes instantly claimed. The prior art teach more of the claimed dye embodiments and concentrations than simply example 124 of WO 00/06652 for which experimental data has not been provided.

6. The examiner further argues that strong motivation to combine the dyes is found in the Tzikas '652 reference (The Tzikas '652 document is not in English so the English equivalent document, US 6,537,332, is being relied upon for citation purposes) wherein in column 9, lines 1-50 Tzikas '332 states that in addition to the dyes disclosed in the reference it is advantageous to add additional reactive dyes to form a mixture for the benefit of shade adjustment. This reference provides evidence that it is known to one of ordinary skill in the art to combine dyes in dyeing processes. In addition to this, it is prima facie obvious to combine two compositions each taught by the prior art to be useful for the same purpose, in order to form a third composition which is to be used for the very same purpose. See *In re Kerkhoven*, 205 USPQ 1069, 1072. Both Tzikas

references are directed to dyeing similar fabric substrates for the benefit of producing dyed fabrics with good all-round properties such as light and washfastness (see both abstracts). Therefore combining one reactive dye with other reactive dyes to form mixtures for the benefit of achieving a desired shade and good all-round properties of the dyed fabric would be obvious to one of ordinary skill in the art. Accordingly, the rejections are maintained.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMINA KHAN whose telephone number is (571)272-5573. The examiner can normally be reached on Monday through Friday, 8:30-5 off. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Amina Khan/
Examiner, Art Unit 1796
June 11, 2010